IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 203 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ELSCOPE PVT. LTD.

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 203 of 1989
MR RK PATEL for Applicant.
MR AKIL QURESHI FOR MR MANISH R BHATT for Respondent.

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

At the instance of the assessee, the Income Tax Appellate Tribunal, Ahmedabad Bench "C" has referred the following three questions for the opinion of this Court:

[1] "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the amalgamation expenses amounting to Rs.18,114/- was rightly disallowed by the I.T.O.treating the same to be capital in nature?"

[2] "Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding the disallowance of amalgamation expenses holding the same to be fees in respect of amalgamation and hence not allowable ?"

[3] "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the Madras High Court decision and the two Supreme Court decisions referred to in paragraph 4 were not applicable to the facts of the case ?"

2 We have heard Mr. R.K.Patel for the applicant-assessee and Mr.Akil Qureshi for the revenue.

3 The Tribunal relied upon its own order in case of Shahibaug Entrepreneurs Pvt.Ltd. against which the said assessee had come in reference before this Court. The said Reference being Income Tax Reference No.15 of 1988 was decided by this Court on 11/1/2001. In the said decision following the ratio of Apex Court in the case of C.I.T. vs. Bombay Dyeing and Manufacturing Co.Ltd.(1996) 219 ITR 521, it was held that the expenditure incurred towards professional fees for the purpose of amalgamation are allowable as business expenditure under section 37 of the Act. Following the aforesaid decision in case of Shahibag Entrepreneurs Pvt.Ltd., we hold that the Tribunal was not right in law in holding that expenses of Rs.18,114/- were to be disallowed treating the same to be capital in nature. Accordingly, all the three questions referred to us are answered in the negative i.e. in favour of the assessee and against the revenue.

4 The reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(M.S.Shah, J) (D.A.Mehta,J)

m.m.bhatt